

## REMARKS

The Office Action dated June 13, 2007 has been carefully reviewed. Claims 38-44 are pending in this patent application. Reconsideration of this application is respectfully requested.

### 35 U.S.C. § 103 Rejection

Claims 38-44 were rejected under 35 U.S.C. § 103 as being unpatentable over Ries et al. (U.S. Patent No. 5,782,928) in view of Amstutz et al. (U.S. Patent No. 4,123,806). Reconsideration of these claims is respectfully requested.

### Discussion Re: Patentability of Claim 38

#### *Claim 38*

Claim 38 recites the following:

press fitting said acetabular cup into said cavity, wherein (i) said acetabular cup including a cup body defining an apex portion, an upper rim and an outer surface extending therebetween, (ii) an imaginary hemisphere defines a great circle lying in a first plane P1, (iii) said cup body is further configured such that when said imaginary hemisphere is superimposed over said cup body, said upper rim lies in a second plane P2 that is spaced apart from said first plane P1 by a distance D, (iii)  $0.5 \text{ millimeters} \leq D \leq 2.0 \text{ millimeters}$ , and (iv) *said cup body is further configured such that when said imaginary hemisphere is superimposed over said cup body, said outer surface of said cup body lies coincident with said imaginary hemisphere from said apex portion to said second plane P2.* (Emphasis added).

In an attempt to identify elements in Ries that meet the above-italicized claimed limitations so as to arrive at the invention of claim 38, the following was stated in the June 13, 2007 Office Action at page 2, lines 21-24:

"Shown best in figure 3 Ries discloses an acetabular cup comprising an apex portion 83, an upper rim, and an outer-surface 82 having a hemispherical

shape that is aligned with the surface of an imaginary hemisphere from the bottom of the apex portion 85 to the second plane 43.”

Thereafter, the Office Action alleges that “[i]t would have been obvious ... to combine the less than hemispherical shape taught by Amstutz with the device of Ries ... .” (See Office Action at page 3, lines 16-18).

Even if it were obvious to combine the “less than hemispherical” teaching of Amstutz with the shape of Ries’ acetabular cup body 71 as alleged, the proposed combination would not arrive at the invention of claim 38. Thus, a *prima facie* case of obviousness under 35 U.S.C. § 103 has not been established with regard to claim 38 based on the proposed combination of Ries and Amstutz.

Significantly, Ries’ cup body 71 has an outer surface 40 that does not comport with the claimed shape of the acetabular cup defined by claim 38. Indeed, the outer surface 40 depicted in Ries’ Fig. 3 is collectively shown by (i) the curved line 81 (on the left lateral side), (ii) the curved line 82 (on the right lateral side), and (iii) the curved line interposed between and connecting the curved lines 81, 82. As described in Ries at column 6, lines 13-21, the curved line 81 is generated by rotation of radius 75 (with origin at point 76) between plane 43 and annular reference line 85, and the radius 78 (with origin at point 79) tracks a curved line 82 between plane 43 and annular line 85. Clearly when an imaginary hemisphere is superimposed over the cup body 71, the outer surface 40 of the cup body 71 does *not* lie coincident with the imaginary hemisphere from the apex 83 to a plane lying one or two millimeters spaced apart from the base plane 43. As a result, the proposed combination of Ries and Amstutz does

not arrive at the invention of claim 38. Thus, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established with regard to claim 38 based on the proposed combination of Ries and Amstutz. Withdrawal of the rejection of claim 38 is therefore respectfully requested.

Discussion Re: Patentability of Claims 39-44

Each of claims 39-44 depends directly or indirectly from claim 38. As a result, each of claims 39-44 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 38.

**Conclusion**

In view of the foregoing remarks, it is submitted that this application is in condition for allowance. Action to that end is hereby solicited.

Respectfully submitted,

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